

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATE OF AMERICA

v.

DECISION AND ORDER
12-CR-45S (6)

GABRIEL RODRIGUEZ,

Defendant.

On March 7, 2016, Defendant Gabriel Rodriguez moved to dismiss the indictment against him, which charges conspiracy to possess with intent to distribute and to distribute marijuana in violation of 21 U.S.C. § 846. (Docket No. 252.) Rodriguez seeks dismissal on the grounds that the continued classification of marijuana as a Schedule I controlled substance violates his constitutional rights. Briefing of the motion concluded on May 3, 2016.

Before the filing and briefing of this motion, Rodriguez's lawyer raised the same issues in a nearly identical motion on behalf of a similarly situated defendant before the Honorable Jonathan W. Feldman, United States Magistrate Judge, Western District of New York. (See United States v. Alexander Green, et al., 14-CR-6038W, Docket No. 82.) It was therefore agreed that the interests of judicial economy were best served by awaiting Judge Feldman's Report and Recommendation in Green, as well as any objection proceedings before the assigned district judge, the Honorable Elizabeth A. Wolford, before proceeding to resolution of Rodriguez's motion.

On June 27, 2016, Judge Feldman issued a thorough and comprehensive Report and Recommendation recommending that Green's motion be denied. (Green, 14-CR-6038W, Docket No. 157.) Judge Wolford adopted Judge Feldman's Report and

Recommendation over Green's objection in an equally thorough and well-reasoned decision on December 7, 2016. (Green, 14-CR-6038W, Docket No. 199.¹)

At the status conference on January 18, 2017, this Court discussed Judge Feldman's Report and Recommendation and Judge Wolford's decision with counsel and advised that it would be adopting the reasoning, findings, and conclusions therein to deny Rodriguez's motion. (Docket No. 299.) In short, this Court joins its colleagues in concluding that the continued classification of marijuana as a Schedule I controlled substance does not violate a defendant's due process or equal protection rights under the Fifth Amendment or violate the equal sovereignty doctrine under the Tenth Amendment. For the same reasons articulated in those opinions, both of which this Court adopts, Rodriguez's Motion to Dismiss is denied.

IT HEREBY IS ORDERED, that Defendant's Motion to Dismiss (Docket No. 252) is DENIED.

SO ORDERED.

Dated: March 6, 2017
Buffalo, New York

/s/William M. Skretny
WILLIAM M. SKRETNY
United States District Judge

¹Judge Wolford's decision is reported at United States v. Green, 6:14-CR-06038 EAW, 2016 WL 7163587 (W.D.N.Y. Dec. 7, 2016).